

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**April 3, 2012**

**The Rhode Island Ethics Commission held its 5th meeting of 2012 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, April 3, 2012, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair    Mark B. Heffner\***

**Deborah M. Cerullo SSND, Vice Chair    John M. LaCross**

**Frederick K. Butler    John D. Lynch, Jr.**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m. the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held**

**on March 20, 2012. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, it was**

**VOTED: To approve the minutes of the Open Session held on March 20, 2012.**

**AYES: John D. Lynch, Jr.; Frederick K. Butler.**

**ABSTENTIONS: John M. LaCross; Deborah M. Cerullo; Ross Cheit.**

**The next order of business was an online filing update. Staff Attorney Gramitt stated that the online filing website went live last Friday, March 30, 2012. He noted that the 2011 financial disclosure statements, along with instructions for online filing and an explanation of the gift regulation, were mailed on March 30, 2012 as well. He stated that thus far the online filing process exceeded the Staff's expectations with one hundred and fifty (150) completed financial disclosure statements being filed in the first twenty-four (24) hours, three (3) times the amount that was expected. He informed that all statements accepted for filing online are complete because the system requires the filer to answer every question. He added that there were no major glitches or crashes with the system.**

**\* Commissioner Heffner arrived at 9:04 a.m.**

**Staff Attorney Gramitt informed that the Commission would be**

issuing a press release through RI Interactive and that he would be speaking to the Providence Journal later this week. He encouraged the Commissioners to call the office if they have any questions about online filing or suggestions for improving the system. He stated that Phase 2 is being coded now for next year's filing. He stated that there was no plan at this time to allow the public to search the financial disclosure database online. He stated that the Commission has an excellent system for complying with APRA requests for financial disclosure statements by offering to email the statements, free of charge, to the person making the APRA request. He noted that the statements are often emailed within minutes if the request is made during business hours.

The next order of business was advisory opinions. The advisory opinion was based on a draft advisory opinion prepared by the Commission Staff for review by the Commission and was scheduled as an item on the Open Session Agenda for this date. The advisory opinion was that of:

Matthew Benson, a member of the Retirement Board for the Town of Johnston Fire Fighter and Police Officer Pension Fund, a municipal appointed position, requesting an advisory opinion as to whether he may participate in the Retirement Board's consideration of a request by the International Brotherhood of Police Officers, Local 307, of which he is both a general member and Secretary of the executive board, to stay enforcement of an ordinance related to disability

pensions pending the outcome of a grievance arbitration.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Gary Gentile, Esq. was also present. Mr. Gentile provided an extensive recitation of the history leading up to the formation of this Retirement Board. In response to Chair Cheit, Mr. Gentile stated that he was there on behalf of the National Association of Government Employees and on behalf of Local 307. Chair Cheit informed Mr. Gentile that this was a limited proceeding and only the Petitioner or someone representing the Petitioner had standing to participate.

Staff Attorney Stewart stated that this was a narrow advisory opinion, finding that the Petitioner is a business associate of Local 307 because he is Secretary of Local 307's executive board. Given his business associate relationship with Local 307, she explained that Regulation 5002 requires the Petitioner to recuse when a representative of his business associate appears before him. Chair Cheit noted that the issue is his status as an officer of the union and that it would be a different question if the Petitioner was merely a general member of Local 307. The Petitioner stated that he did not see himself as a business associate of the union. He also stated that he believed that the intent of the ordinance was to have a board member of Local 307 serve on the Retirement board.

Commissioner Lynch noted that the ordinance creating the

Retirement Board seems to have intended this inherent conflict. Commissioner Butler responded that even though Regulation 5002 requires the Petitioner to recuse if a union representative or attorney appears before him, he is not necessarily required to recuse if an individual union member appears before the Retirement Board relating to that individual's benefits. Chair Cheit suggested that the union member's role on the Retirement Board would be to promote union interests. In contrast, Commissioner Cerullo suggested that there is a police officer on the Retirement Board to ensure that someone on the Board has the same perspective as the person whose benefits are before the Retirement Board for consideration.

In response to Commissioner Heffner, the Petitioner stated that the Retirement Board has many roles, including managing the pension fund for police officers and firefighters. Chair Cheit stated that the Commission has made clear distinctions between being a member and officer of a union, and that an officer is a business associate of the union. Staff Attorney Gramitt noted that although the ordinance states that Local 307 shall select the police officer member, it does not necessarily mean that the police officer member is a representative of Local 307; the police officer Retirement Board member can still exercise his own independent judgment.

Discussion ensued about the limited scope of this advisory opinion. Commissioner Heffner asked the Petitioner to seek further guidance in the future if he has questions as to whether he can participate.

**Upon motion made by Commissioner LaCross and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Matthew Benson, a member of the Retirement Board for the Town of Johnston Fire Fighter and Police Officer Pension Fund.**

**At approximately 9:58 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**a) Motion to approve minutes of Executive Session held on March 20, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**b) Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938, pursuant to R.I. Gen. Laws § 42-46-5(a)(2).**

**The Commission reconvened in Open Session at approximately 10:02 a.m. The next order of business was a motion to seal the minutes of the April 3, 2012 Executive Session. Upon motion made and duly seconded, it was unanimously**

**VOTED: To seal the minutes of the April 3, 2012 Executive Session.**

**Chair Cheit reported that the Commission took the following actions in Executive Session:**

**1)Voted to approve the minutes of the Executive Session held on March 20, 2012.**

**[Reporter's Note – The vote was as follows:**

**AYES: John D. Lynch, Jr.; Frederick K. Butler; Mark B. Heffner.**

**ABSTENTIONS: John M. LaCross; Deborah M. Cerullo; Ross Cheit.**

**The minutes were approved with three (3) affirmative votes.]**

**2)Had no discussion of the litigation matter, Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938.**

**The next order of business was a second motion to approve the minutes of the Open Session held on March 20, 2012. Upon motion made and duly seconded, it was**

**VOTED: To approve the minutes of the Open Session held on March 20, 2012.**

**AYES: John D. Lynch, Jr.; Frederick K. Butler; Mark B. Heffner.**

**ABSTENTIONS: John M. LaCross; Deborah M. Cerullo; Ross Cheit.**

**The minutes were approved with three (3) affirmative votes.**

**The next matter was an adjudicative hearing in the matter of In re: Brian G. Coogan, Complaint No. NF2011-8. The hearing was**

**stenographically recorded and a transcript of the proceeding is available at the Commission Offices. Commission Prosecutor Nicole B. DiLibero represented the People of the State of Rhode Island. The Respondent, Brian G. Coogan, was present.**

**After both parties gave opening statements, the Commissioners questioned both the Prosecution and the Respondent. The Respondent admitted to failing to timely file his 2010 financial disclosure statement. The Commission deliberated in open session. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To find that the Respondent, Brian G. Coogan, violated R.I. Gen. Laws § 36-14-16 by failing to timely file his 2010 Financial Disclosure Statement.**

**Commission Prosecutor DiLibero suggested a penalty of \$1500 be imposed on the Respondent, Brain G. Coogan, for this finding of a violation. The Commission considered the Respondent's assertion of mitigating circumstances. Upon motion made by Commissioner Lynch and duly seconded by Commission Heffner, it was**

**VOTED: To impose a fine of \$500 on the Respondent, Brian G. Coogan, for failure to file his 2010 Financial Disclosure Statement.**

**AYES: John M. LaCross; Frederick K. Butler; Mark B. Heffner; John D.**



**Lynch, Jr.; Ross Cheit.**

**NOES: Deborah M. Cerullo.**

**The next matter was an adjudicative hearing in the matter of In re: Nina Pande, Complaint No. NF2011-20. The hearing was stenographically recorded and a transcript of the proceeding is available at the Commission Offices. Commission Prosecutor Amy C. Stewart represented the People of the State of Rhode Island. The Respondent, Nina Pande, was not present.**

**Commission Prosecutor Stewart gave an opening statement. She presented the Commission with Exhibit 1, the affidavit of Michelle Berg, Ethics Commission Administrative Officer in charge of Financial Disclosure, along with six (6) attachments. Exhibit 1 was admitted as a full Exhibit. She presented the Commission with Exhibit 2, the affidavit of Peter J. Mancini, Ethics Commission Deputy Chief Investigator, along with one (1) attachment. Exhibit 2 was admitted in full. Commission Prosecutor Stewart gave a closing argument.**

**The Commission questioned Commission Prosecutor Stewart. The Commission deliberated in open session. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To find that the Respondent, Nina Pande, violated R.I. Gen. Laws § 36-14-16 by failing to timely file her 2010 Financial Disclosure Statement.**

**Commission Prosecutor Stewart suggested a penalty of \$1000 be imposed on the Respondent, Nina Pande, for this finding of a violation. The Commission deliberated in open session. Upon motion made by Commissioner Butler and duly seconded by Commission Heffner, it was unanimously**

**VOTED: To impose a fine of \$1500 on the Respondent, Nina Pande, for failing to timely file her 2010 Financial Disclosure Statement.**

**The next order of business was a legislative update. Staff Attorney Gramitt stated that the House resolution to restore jurisdiction to the Ethics Commission over core legislative acts is before the House Judiciary Committee this evening. He stated that he was going to attend to voice the Commission's support for this bill, grounded in its belief that the people originally intended by voting to amend the Constitution in 1986 that the Ethics Commission should have jurisdiction over core legislative acts.**

**Staff Attorney Gramitt also reported that he recently appeared before a House Finance Subcommittee, along with Executive Director Willever, regarding the Ethics Commission's budget. He stated that it was a short hearing, given our small budget, and that most of the**

questions were about operations.

The next order of business was the Director's Report. Executive Director Willever reported that there are five (5) complaints, two (2) advisory opinions, and one (1) litigation matter pending. He also stated that we received a complicated and voluminous APRA request that is in the process of being completed.

The next order of business was New Business. Chair Cheit apologized for missing the last meeting. He thanked Secretary Harsch for stepping up and serving as Chair at that meeting. He also stated that he was very pleased to hear from Brian G. Coogan, the Respondent in a complaint matter adjudicated at this meeting, that the Commission investigators and staff were very courteous and professional in all of their interactions with him. He thanked those staff members for their good work.

At 11:05 a.m., upon motion made by Commissioner Heffner and duly seconded by Commissioner Lynch, it was unanimously

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**Harsch**

**J. William W.**

**Secretary**